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Session 10: Communities and Institutions: Negotiating Differences, Sunday June 27, 1:00-2:30.

Title: Martha Nussbaum: Feminism Between Universalism and Pluralism

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1. Introduction

For this session, called "Negotiating Differences", I would like to discuss the way in which Martha Nussbaum seeks to reconcile her universalist approach to the capabilities with the principle of respect for freedom of choice, which she calls pluralism.

Central to Nussbaum's philosophy is the formulation of capabilities. She calls these capabilities "universal values". They enable all people, including women, to lead flourishing lives. They are rights which all women should have: the right to life, to bodily health, to bodily integrity, the ability to use the senses, imagination and thought, the capacity to express emotions, the ability to use practical reason, to have freedom of affiliation, being able to live in relation to other species, being able to play and having control over one's environment (Nussbaum 1999:41-42, Nussbaum 2000: 78-80). At the root of these capabilities lie the Aristotelian notion that all people should be able to live a good life and the Kantian notion of the fundamental dignity of human beings (Nussbaum 1999:38, Nussbaum 2000:73). Nussbaum furthermore sees these values as based on "...an intuitively powerful idea of truly human functioning which has deep roots in many different traditions..." (Nussbaum 2000:150-151).

From one perspective, gender justice would seem to imply that women everywhere have the same rights. In one sense, this is Nussbaum's position. She is convinced that the capabilities are good for everyone and that these goods should be realized. She argues that all governments in the world should strive to enable their citizens to realize the capabilities. She has worked to this end with U.N. projects such as WIDER and by visiting development programs in countries such as India and Bangladesh. She believes that institutions such as the U.N. and non-governmental organizations can make substantial contributions to this project (Nussbaum 1998: 766-784, Nussbaum 1999:35-37). In this respect, Nussbaum's philosophy can be linked to U.N. initiatives such as the Women's Convention, an international agreement which guarantees equality between men and women in all countries of the world (Charlesworth 2000: 66-68).

In another sense, Nussbaum's position is that gender implies that there is respect for cultural, legal and religious diversity in countries throughout the world (Nussbaum 2000:104-105). This means that women have the right to choose how to live their own lives. Freedom of choice entails the capacity to refuse to implement the capabilities. Women could, for example, choose not to exercise the capability of freedom of affiliation (for example, being able to leave the home freely or having paid employment) or having control of their environment (for example, being able to own property).

Even though the universalist position and the pluralist position seem irreconcilable, Nussbaum nevertheless claims that it is possible to combine them. She writes in *Sex and Social Justice*: “They [these essays] try to show that a universal account of human justice need not be insensitive to the variety of traditions or a mere projection of narrow Western values onto groups with different concerns” (Nussbaum 1999:8). Nussbaum uses various strategies to realize this goal: examining the presuppositions of the universalist and pluralist claims, attempting to bring the claims closer together, and showing that the interests of the universalist and the pluralist can coincide.

In this paper, I would like to go through some of the arguments which Nussbaum uses to reconcile universalism with pluralism. I will discuss the following sets of arguments: arguments concerning (1) The image of cultures, groups and traditions (2) The notion of preferences (3) Respect for choice in a liberal, democratic society and (4) The freedom of religion. In conclusion, I will consider the problem of bringing pluralism and universalism closer together in light of a notion which Nussbaum uses, that of the application of judgment to the particular. I will argue that the issue of universalism and pluralism is fundamentally an issue of practical wisdom.

2. The image of cultures, groups, religions and traditions

Nussbaum argues that a “crucial step” (Nussbaum 1999: 8) in discussing the opposition between universalism versus pluralism is that of dealing with the issue of the identity of cultures, groups, religions and traditions. She makes several points concerning this question.

Firstly, Nussbaum argues that the criteria for interpreting cultures, groups, religions or traditions are not very clear. She suggests that when people begin interpreting, they make choices which they have not thought through very well. For example, in some cases, people interpret a culture in light of its most repressive elements. This was the case in the British colonialist interpretation of Indian culture. The British saw themselves as enlightened, especially about women’s rights, and they considered Indian culture to be backward (Nussbaum 2000:47). But the preference for emphasizing the most repressive elements also applies to our present-day interpretations of Islam or Confucianism. In the media, much attention is paid to fundamentalist versions of these religions, and not to the moderate varieties. Cultures and religions vary in the extent to which they endorse emancipation – it is important to include the more progressive elements in our analyses as well.

Nussbaum argues that we also tend to focus on groups within cultures which we consider to be more traditional. She asks: “Why should one’s group be assumed to be the ethnic or religious group of one’s birth? Might it not, if one so chooses, be, or become, the international group of women – or of people who respect the equality and dignity of women?” (Nussbaum 1999:9). It is very difficult deciding which groups are representative for people or even of society as a whole. Society is made up of many different groups with different views and political and social agenda’s.

Thirdly, Nussbaum argues that cultures, groups and religions continually change. She argues that we should not see them as timeless monoliths. She writes: “Real cultures contain plurality and conflict, tradition, and subversion. They borrow good things from wherever they find them, none too worried about purity.” (Nussbaum 1999:37).

Lastly, we must be aware of not imposing a notion of tradition on other people which we would not impose on ourselves. Nussbaum writes: “We would never tolerate

a claim that women in our own society must embrace traditions that arose thousands of years ago – indeed, we are proud that we have no such traditions. Isn't it condescending, then, to treat Indian and Chinese women as bound by the past in ways that we are not?" (Nussbaum 1999:37).

With these arguments, Nussbaum attempts to show that the pluralist who emphasizes the difference between pluralism and universalism may be making assumptions concerning the nature of cultures, groups, religions or traditions which emphasize their conservative side. They focus on the traditional elements, which does not do justice to diversity and change and which seek to bind women to the past. If the pluralist were to focus on other aspects, it would mean that the gap between pluralism and universalism might not be so large as it might seem to be at first glance.

3. Preferences

A second set of arguments aimed at analyzing the relation between pluralism and universalism concerns preferences. In a pluralist view, it is argued that there must be respect for the preferences of people. This can be contrasted to a universalist position in which the universal is seen as taking precedence over preferences. Nussbaum also attempts to bring these points of view closer together.

Firstly, Nussbaum introduces the notion of informed versus uninformed or deformed preferences (Nussbaum 2000:111-166). Nussbaum shows that not all the preferences which people have are good for them. For example, preferences of people who are opposed to hygiene, health care or education might well be deformed. Deformed preferences arise from a lack of knowledge or because they are formed under duress. Once people are educated as to the value of other preferences, Nussbaum claims they come to prefer those. An example of creating an informed preference is Martha Chen's literacy projects in Bangladesh. Chen learned that it is not enough to give women literacy materials to study – they will do nothing with the material they are given. They must first be presented with a program in which they learn what the significance of literacy is (Nussbaum 1999:47-48). In this way, their uninformed preference not to be literate is transformed into an informed preference for literacy. Once educated, these women will come to prefer literacy to being illiterate. This is a case in which a universal value comes to be the preferred choice in a pluralist sense.

Secondly, Nussbaum argues that not all government policy decisions should be based on preferences. She argues for this view in her book *Women and Human Development* with a lengthy consideration of preference theories in economics (Nussbaum 2000: 111-148). People may, for example, have a preference for massive consumption, yet a government may refuse to respect this preference and instead implement a policy of just distribution of wealth. There are many examples of the state creating legislation which goes against the preferences of at least some of its citizens: laws concerning drug use, seatbelt use, or drinking and driving. There is therefore always a gap between that which the state legislates and the preferences of at least some groups of people within the state. This means that the pluralist notion of preference is not an absolute value but must be tempered by values which can be imposed on people.

Thirdly, Nussbaum argues that one of the reasons why the state creates legislation in opposition to preferences is because it assumes that there is such a thing as the substantive good. Nussbaum calls this a Platonic notion of the good. To give an example, there can be a preference in a culture for violating women's rights, but the substantive good is that these rights are respected. Therefore, the state need not respect the preferences of those who want to violate women's rights. But how do we know

which goods are substantive goods? Nussbaum argues that we understand what the substantive good is if we take notions such as flourishing and human dignity as basic. The substantive good is in harmony with these principles. Universal values as substantive goods therefore have priority over pluralist preferences.

This is, however, not to say that the substantive good is absolute. Nussbaum argues that our notions of the substantive good can change in the course of time. The political process reflects such changes. She therefore calls her list of capabilities, which she regards as a list of substantive goods, “open-ended and humble” (Nussbaum 2000:77)

Nussbaum does not want to completely replace preference theories with a theory of the substantive good because the notion of preference is an important indication of what people want, something which, she states, should be respected. At the same time, she states “...we had better take our stand squarely in the camp of the substantive good” (Nussbaum 2000:166).

Nussbaum therefore argues that the view of the pluralist that preferences should be respected, must be modified. Preferences are not always informed, they need not always be determinative of political decision making and preferences should be weighed in light of the substantive good. Preferences are not absolute and they need not be absolutely respected. As to the universalist position, Nussbaum argues that an important measure of the value of the substantive good is whether or not people prefer it. Furthermore, she argues that a notion of the substantive good must be constantly open to revision.

Nussbaum thus attempts to close the gap between a pluralism which takes preference as absolute without questioning its presuppositions and a universalism which sees its values as absolutely good regardless of whether or not people prefer these goods.

4. Liberal values: freedom of choice

Nussbaum believes that all governments in the world should be both liberal and democratic. She would therefore never want her capabilities to be imposed on people in a totalitarian way. She respects political freedom of choice. She attempts to reconcile her universalism with freedom of choice in a number of ways.

Firstly, she argues that the capabilities are goals to be attained and do not impose actual functioning on a society (Nussbaum 1999:41). Societies are free as to whether or not they implement the capabilities. For example, the Indian constitution recognizes equal rights for women, thus instantiating one of the capabilities. At the same time, this goal of equal rights does not immediately mean that these rights are always respected in practice. This is because there are systems of religious law in India which legislate in ways which differ from the constitution. In a sense, Nussbaum deplores this bifurcation because she believes the capabilities represent the substantive good. Yet in another sense, she considers it very important to respect the practices of people within the state. In India, this takes the form of respecting religious laws (Nussbaum 2000:167-198).

Another example of the distinction between goal and actual functioning is on the level of international conventions. By inviting governments to sign a convention guaranteeing equal rights for women, the United Nations is setting a goal for them. The actual signing of the convention is, however, a matter which must be decided by individual governments. Furthermore, these governments must make their own decisions as to how they will go about implementing these goals in their own countries.

Secondly, Nussbaum argues that capabilities must be implemented in the context of the cultures in which they are introduced (Nussbaum 2000:105). For example, the goal of creating an educational system for women means that the education should reflect the traditions of the culture in which it takes place. Another example is how cultures deal with the changes in role divisions between men and women once women are educated. Returning to the example of Martha Chen's literacy project in Bangladesh, a great deal of effort was made by those who ran the project and by the women themselves to convince the men that the changes in role divisions were not threatening.

Nussbaum therefore attempts to close the gap between pluralism and universalism by questioning the assumption that universalism implies the imposition of the capabilities. She argues that values are not to be imposed on countries in an undemocratic way and that if the values are realized in a society they must be integrated into that society. In this way, Nussbaum seeks to do justice to the pluralist position that democratic processes and respect for functioning in a society should be respected.

5. Freedom of religion

A final example of how Nussbaum seeks to reconcile pluralism and universalism is through her examination of the issue of freedom of religion. A pluralist might argue that religious freedom should be respected, even if it means not implementing the capabilities because of that. A universalist may argue that freedom of religion can be overridden if it blocks the implementation of the capabilities in a society. Here too, Nussbaum seeks to bring these points of view closer together.

Firstly, Nussbaum argues that freedom of religion is limited. If a religion undermines compelling interests of the state, it can be forbidden. For example, if a religion mandates massive use of narcotics, the state can forbid it, arguing that it undermines its laws against drug use. This is a compelling interest because in this case the authority of the state is at issue (Nussbaum 2000:198-206).

Secondly, religions are bound by moral constraints. For example, if a religion mandates abuse of women, the state can forbid such practices, arguing that there are moral grounds for not allowing them (Nussbaum 2000:204).

Even though the state can legislate against certain religious practices, it is nevertheless important to respect freedom of religion. It is up to the state to prove that it has compelling interests to forbid certain practices. An example of respecting freedom of religion at the expense of women's rights is that of allowing the Roman Catholic Church to forbid the ordination of women. In this case, the state cannot prove it has compelling interests to forbid this practice and it cannot prove that such practices severely encroach on the wellbeing of women. But as this example shows, it can sometimes be very difficult to determine when the principle of freedom of religion should be applied and when it should be overridden. Nussbaum shows that courts in the United States have repeatedly weighed these issues and have come to different conclusions concerning the limits of freedom of religion.

The discussion concerning freedom of religion shows that respect for pluralism and the desire to implement values must be weighed carefully (Nussbaum 2000:206-240). It is not the case that religions are always free to do as they wish and it is also not the case that the state can always override freedom of religion.

6. Conclusion

Nussbaum argues that the desire to implement universal values can be combined with respect for pluralism. This combination of universalism and pluralism is, however, one of abiding tension. Nussbaum speaks in this context of the problem of the application of judgment to the particular (Nussbaum 2000:212). In every case in which a universal value is applied to a particular situation, judgment occurs. Are these universal values as good as they are claimed to be? Do people really want these values to be introduced and should their preferences not be respected? Does the judgment in a particular case lead to flourishing lives or is the result the imposition of Western values on other countries?

Nussbaum argues that this moment of application is an exceedingly difficult one. At the same time, it is part of a dynamic process, in which values come in contact with cultures, religions, and traditions which previously did not have these values. In this process, the cultures, religions and traditions change, but if the values are truly embedded within the new contexts, the values themselves will change. In the end, Nussbaum hopes that the capabilities will be transformed from goals to actual functioning so that women in all countries of the world will be able to live flourishing lives. At the same time, they should be able to live their lives in the context of their own culture, traditions and religion.

Literature

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